

APPROVED

KITTERY TOWN COUNCIL

September 12, 2005

Council Chamber

1. CALL TO ORDER

The meeting was called to order at 7:04 p.m. by Chairperson Ann Grinnell.

2. INTRODUCTORY

Chairperson Grinnell read the Introductory.

3. PLEDGE OF ALLEGIANCE

Chairperson Grinnell led those present in the Pledge of Allegiance.

4. ROLL CALL

Answering the roll were Councilors Frank Dennett, Matt Brock, Glenn Shwaery, Rich Balano, Leo Guy and Chairperson Ann Grinnell. Also present were Town Manager Jon Carter, Town Clerk Maryann Place, Planning Board Members Janet Gagner, Scott Mangiafico, Doug Muir and Chairman Russell White, Town Planner Jim Noel, Chief of Police Edward Strong, Recorder Chris Kudym, Gary Litsinberger, Susan Emery, Debbie Driscoll, Don Moore, Heather Thibideau, members of the press and others.

5. ACCEPTANCE OF PREVIOUS MINUTES

Councilor Dennett called attention to the statement on the first page under Acceptance of Previous Minutes and questioned its accuracy. An amendment will be made to show that the Minutes of August 8, 2005 were accepted. Councilor Dennett then asked that the last name of the newly hired Accountant listed under Committee Reports and Other Announcements be changed from Leeson to Racine, reflecting its correct spelling. He further requested that future Minutes be paginated. Councilor Shwaery asked that under Item 7c. language be inserted that the mobile unit luncheon wagon that was previously granted had been rescinded at the August 8 meeting. The Minutes of August 22, 2005 were accepted, as amended.

6. INTERVIEWS FOR PLANNING BOARD, ZONING BOARD OF APPEALS AND/OR CABLE TELEVISION RATE REGULATION BOARD: *NILES PINKHAM FOR THE ZONING BOARD OF APPEALS UNTIL 12/1/07 (REPLACING PATRICK BEDARD)*

Chairperson Grinnell said that Niles Pinkham was here for an interview for the Zoning Board of Appeals to take Patrick Bedard's place and asked Mr. Pinkham if he would come forward and, if he wished, to make a statement.

Mr. Pinkham said he hoped he could bring some common sense and thought the most important thing was to vote by the law and not by feelings and he thought he would be able to do that. He believed in individual rights, however, the Board was given criteria to work with and so issues were pretty much cut and dried with not much room for feelings or your own thoughts on the matter.

Chairperson Grinnell asked the Councilors if they had any questions for Mr. Pinkham.

Councilor Shwaery told Mr. Pinkham he had heard some discussion about his belief that the Town tended to help larger builders and did not help smaller ones and asked him to qualify that, noting that Mr. Pinkham would have to vote by the law any way.

Mr. Pinkham said that he thought people like him tended to get short-shrifted sometimes but knew you still had to vote by the law and he would definitely try to do that.

Chairperson Grinnell asked Mr. Pinkham, so, you want everybody to be treated the same; and Mr. Pinkham answered, yes, he did. Ms. Grinnell said that seemed fair to her and she already supported Mr. Pinkham. She then asked if there were any other questions. Councilor Brock said he thought Mr. Pinkham did a very commendable job when he applied for Town Council, was very articulate and that he also supported him for the position.

CHAIRPERSON GRINNELL MOVED THE APPLICATION OF NILES PINKHAM FOR THE ZONING BOARD OF APPEALS UNTIL DECEMBER 1, 2004, REPLACING PATRICK BEDARD. COUNCILOR SHWAERY SECONDED. ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/0.

Town Manager Carter explained to Mr. Pinkham that he would need to be sworn in and also pick up some material, asking Mr. Pinkham to stop by his office tomorrow and that the Zoning Board would be meeting tomorrow.

7. a. *THE KITTERY TOWN COUNCIL MOVED TO RECOGNIZE THE STATE SNOWPLOW ROADEO CHAMPIONS OF THE KITTERY PUBLIC WORKS DEPARTMENT, JASON BEAUREGARD AND JAMES NIGHTINGALE.*

Chairperson Grinnell asked Mr. Beauregard and Mr. Nightingale to come up. Town Manager Carter addressed the Council and members of the public explaining that Mr. Beauregard and Mr. Nightingale won the York County Snowplow Roadeo Championship, then went on to the State contest and won the State, earning their way out to the National Championship, which was later this month so we're very proud and I know Rick Rossiter is also proud, their bosses. Mr. Carter presented a plaque to both Mr. Beauregard and Mr. Nightingale, saying "great job" and that the Town now had "bragging rights."

Chairperson Grinnell also made a presentation and offered them the congratulations of the Council. Ms. Grinnell wondered where the trophy would be going and Town Manager Carter suggested it stay in the Town Offices for a while. He also wanted to let people know that Mr. Beauregard and Mr. Nightingale would be going to Colorado to compete in a week-long program, which they had done before, but that this time, they would "bring home the bacon" and be national champs.

b. *THE KITTERY TOWN COUNCIL MOVED TO HEAR AN UPDATE ON THE 122ND LEGISLATIVE SESSION FROM REPRESENTATIVE WALTER WHEELER.*

Chairperson Grinnell said she saw Representative Wheeler in the audience and asked him to make his presentation.

Democratic Representative Wheeler made a presentation listing the accomplishments of the 122nd Legislature, which included their first regular and special sessions. The following topics were highlighted and are detailed in a document contained in the Council packets: Health Care, Containment of Prescription Drug Costs, Education, Small Business,

Environment, Consumer Protection, Public Safety, Labor, State Finances, Taxation (with subheadings of Property Tax Relief and Cigarette Tax), and Bonds.

Chairperson Grinnell thanked Representative Wheeler and, going on, said that there was a note at the bottom of their Agenda asking if the Board would consider suspending Council Rules and take up Item 11.e. under New Business prior to holding Public Hearings. Ms. Grinnell asked for consensus from the Council and received unanimous approval.

(NEW BUSINESS, 11.e.) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE AND SIGN A CERTIFICATE OF NOTICE TO TOWN CLERK IN COMPLIANCE WITH MRSA TITLE 30-A, SUBSECTION 4352, 10(B) REGARDING NOTICE OF PROPOSED ZONING CHANGES IN THE LOCAL BUSINESS AND LOCAL BUSINESS-1 DISTRICTS.*

Chairperson Grinnell asked for input from the Council and requested that discussion begin. Councilor Dennett said that two legal notices had been published in the newspaper and that the Local Business and Local Business-1 notice was sent to owners of property affected by the zoning change as well as abutters thereto. Councilor Dennett said that the maps connected with those notices were incorrect and although the Town Attorney had ruled it was not a material error, as much as he respected the Town Attorney's opinion, Councilor Dennett did consider it a material error and said that he would simply abstain from voting on this issue.

Councilor Brock asked if a map was required to be attached to a legal notice and Councilor Dennett said that the map was incorrect and even though having an attached map satisfied legal requirements; apparently it didn't have to be a correct map. Chairperson Grinnell thanked Councilor Dennett and asked if any other of the Councilors had anything.

COUNCILOR BALANO MOVED THE APPLICATION, SECONDED BY COUNCILOR GUY. MOTION PASSES BY VOICE VOTE AS FOLLOWS: 5 IN FAVOR; 0 OPPOSED; 1 ABSTENTION.

Chairperson Grinnell said, going back to public hearing, that this would be a joint public hearing, asking members of the Planning Board to please take their places.

Planning Board members Janet Gagner, Scott Mangiafico, Doug Muir and Chairman Russell White took their places.

8. PUBLIC HEARINGS

a. (090105-1) *THE KITTERY TOWN COUNCIL MOVES TO HOLD A JOINT PUBLIC HEARING WITH THE PLANNING BOARD TO RECEIVE COMMENTS ON, AND HEREBY ORDAINS AMENDMENTS TO THE LOCAL BUSINESS (LB) AND LOCAL BUSINESS-1 (LB-1) ZONING DISTRICTS AND MAPS OF THE LAND USE AND DEVELOPMENT CODE.*

Members of the public were invited to address the Planning Board and the Town Council at the podium.

Mr. Gary Litsinberger said he lived on Route 1 on property zoned LB that was unique in that more than two-thirds of the property was now cut off with the new zoning that came down

Maple Avenue and that his egress went out to Route 1. Even though he was really excited about this comprehensive new plan for an LB-1, he became aware of how much he was losing.

Councilor Brock asked Mr. Litsinberger to explain what he wanted to be able to do and Mr. Litsinberger said that part of his property would be zoned Urban Residential, which hindered his ability to access Route 1. Pointing to a map, he showed where his road started and that it went over to Old Post Road and he believed that he could alleviate any pressure off of Route 1.

Chairperson Grinnell asked if there were any other questions. Mr. Mangiafico asked Mr. Litsinberger if the back of his property was commercial and he answered no but that prior to LB-1 he had been able to use it. Mr. Mangiafico then asked Mr. Litsinberger about the district around the rear of his property that he said would be zoned Urban Residential. Mr. Litsinberger said that right across the street was zoned commercial again but this side (pointing to the map) back here was Urban Residential.

Chairman White said that the issue was the change in setback requirements since the setback for Urban Residential was more than it would be for LB. Mr. Litsinberger said that basically, he wanted to get the back of his property zoned as LB-1 and he hoped the Board would require parking, as they have in the past.

Mr. Mangiafico asked Mr. Litsinberger if this change were made, would it encompass any residences. Chairman White asked Mr. Litsinberger if he was only talking about his own property and Mr. Litsinberger answered yes, that was correct.

Chairperson Grinnell asked if there was anyone else that would like to address the Council and Planning Board.

Susan Emery of Kittery Point came to the podium and said she had a couple of statements and would like to ask a question. She said that under "Permitted Uses" for an LB zone, the Code added "educational facility" in addition to school and that she could find no stated definition of it on the Town's website. She understood that if there was no definition that the Board used the dictionary definition but her question was what was the thinking of the Planning Board in adding on educational facility and could they give her some examples of what was intended and if, in fact, there was a definition.

Chairman White explained to Ms. Emery that the Board was making an effort to create more consistency in the use of definitions found in LB and LB-1. He said that, over time, an odd inconsistency had occurred that they were trying bit by bit to correct and, basically, that was the reason since in other LB-1 ordinances, which were about five years old, it had already been used and that no one had yet convinced them to put in a definition.

Ms. Emery said that her concern and that of her husband was that the definition could be expanded beyond schools to something like a community college in those areas zoned LB such as Lewis Square and Frisbee's Market; she said that schools were consistent with local services but if something like a college went in, it would bring people in from a much greater area into Kittery Point and, to some extent, the Whipple and Rogers Road area, all of which were pretty much residential areas.

Ms. Emery said that even in business areas there were narrow roads so the potential existed for incredible traffic and noise onto roads that did not really have the capacity. Also, she said, it would not seem to be in keeping with the purpose of providing local sales, services and business space. Looking at the four sections that are described in this LB area, Ms. Emery

said that the Route 1 corridor area shown was very different from the other three areas and although it may be better to be part of the LB-1 district, at this point, she was specifically addressing her concerns with the two locations in Kittery Point and that, in her opinion, it would also apply to the Whipple Road and Rogers Road area.

Ms. Emery said she was glad to see that the mechanical service was left in even though it's a special exception but she thought that in Kittery Point and in that Whipple Road area having those two local service stations was really critical to the quality of life in the Village area. At first, she was concerned, but when she saw them listed as special exceptions, she thought that was acceptable.

Ms. Emery said that under special exceptions they would also be opposed to adding in hotels in those areas. Currently, a motel and an inn are possible. She said that in looking up the definition of a motel she found that a motel is primarily for sleeping, without cooking facilities. Then you have inns, and the definition of an inn would be more than 12 rooms but then you get into a hotel, which is defined as anything more than 20 rooms and also you could have restaurants so it becomes a similar concern as a large educational facility. It seems that a motel or an inn would be in keeping with those areas but a hotel with no limits on it would be out of scale and potentially bring in a lot of traffic onto those roads. Ms. Emery said she knew that, years ago, Kittery Point was a hotel district but that was before automobiles and families came and stayed there for the summer. It's very different today and a hotel would put a lot of stress on small roads and bring a lot of traffic into residential areas.

Under standards on the roofs, Ms. Emery said she didn't notice any comment about the roof color in these areas. She said she knew a lot of this was coming from the design standards as well as the original-use zone but that the roofs were supposed to be muted in color, in keeping with the seacoast, rather than bright colors that would not. She wondered if she missed that language somewhere but if not, she wanted to request that it be added in, to be consistent with a mixed-use zone. She said she thought that, at least originally, it was included in the LB-1 District.

Ms. Emery said that the only comment she had on the LB-1 District would again refer to the roof color, requesting that the muted colors be added to be consistent with the types of standards that had been put into our other commercial zones. Thank you.

Chairperson Grinnell thanked Ms. Emery and asked if there was anyone else who would like to address the Council or the Planning Board.

Ms. Debbie Driscoll said good evening and that she had several questions and one comment. She wondered if the Design Standards Handbook was available and was told that it was on the website because printing copies was cost-prohibitive.

Ms. Driscoll said she was curious about the reason for changing A/B/C/D from LB to LB-1 and wondered if the Board had taken into consideration the infrastructure needs that would subsequently occur. She said one of the main reasons was that in places where you have Town water and sewer, you had all the things you needed to make this happen but if you have any areas that didn't have that, it would potentially cost the taxpayer to make it work.

Ms. Driscoll was concerned as well about areas where water uses would require a high setback and also said that if the language of the zoning ordinances could be worded in such a way that people would understand what they could and could not do, perhaps listing restrictions at the bottom, that would make it much easier to read through.

As far as the smaller zones in Kittery Point, Ms. Driscoll wondered if the Board would consider an LB-2 zone that would list parameters on building in order to keep the place unique and not allow things brought in that people would deem undesirable at this point. She was also curious about why there was a difference between LB and LB-1 about where parking should be, i.e., on the side or in front.

Ms. Driscoll said that under "Permitted Uses," under the LB-1 Zone that the Board used the term "mass transit" and that, to her, mass transit sounded like a huge facility and she didn't think that was what anyone would envision in their little town. She also wondered if there was an exception on the camouflage of rooftop protrusions and asked if that applied to roof height or something in addition.

Ms. Driscoll said she was curious as to why in the LB zone there was no minimum lot size and no minimum street frontage and ended her comments by telling the Board that if they could enlighten her, she would be "happy as a clam."

Chairman White said that was quite a list and he thought they would keep writing down the comments and address them at the end. At that time, a member of the public audience said he would like to ask just one question concerning the place on Dennett Road, which is just beside the Dennett Garrison, and wondered how that was handled. It was his opinion that if it was going to be allowed, that would be a very poor choice for people who lived there to have the possibility of a business section right in that area and that it had been hard to know if the area had been included or not. Chairman White said that the zoning did not go that far.

Chairperson Grinnell asked if there was anyone else who would like to address the Board and the Council.

Mr. Brandon Bedard of State Road said that he had a couple of comments on LB-1; he thought there were a lot of extra rules like planting flowers, stone walls, fencing, etc., that put a lot of additional expense on the small business owner. The rules included even minimum tree size and height and that now, they would have to submit lighting and landscaping plans along with his building plan, which will cost them additional time and money. Mr. Bedard said there were regulations on everything from siding and roofing to what to plant and he could see some of it but when even the kind of trees were regulated; what if he wanted to plant something else and he just thought there were a lot of extra rules.

Chairperson Grinnell asked if there was anyone else.

Mr. Jeff Absee said that he had the old Dennett School on Route 1 and his question concerned why the line was made where it was. Another question Mr. Absee had was concerning parking regulations for LB-1 and he was wondering if the parking requirement for LB would be the same as the current Commercial zone; he knew it changed for the LB-1.

Mr. Absee wanted the Board to know that he totally supported their plan and thought it was good for the future of Kittery and it allowed people to make use of their property. He said, however, he would like the Board to review the height requirements in connection with the really strange roof he had. He said that he wanted to do a mansford-type roof in order to improve the roof and mechanics of the building and the height requirement was the only major obstacle in the way of his being able to do what he wanted with his property.

Chairperson Grinnell asked if there was anyone else.

Ms. Debbie Driscoll said that she had one other item she didn't mention before and that was about the minimum and maximum front yard setbacks and that their local business was very different from the LB-1 zone and she wondered about it. She said she understood that the requirement would apply not only to something brand new but also if changes were being made to existing property. She thought that the requirement made all the sense in the world and was very much in support of it since she thought it was very important in the type of Town we have.

Chairperson Grinnell said she was closing the public meeting and turned the meeting over to the Planning Board.

Chairman White thanked Chairperson Grinnell and said that the Board wanted to make responses in the order that comments had been given.

Mr. Mangiafico said that, concerning the area of the Route 1 corridor, there had been discussion about properties in that area and it had been his understanding that when the Board originally talked, it had been about those on the south and less on the north. He wondered if these got "flip-flopped" in the description.

Chairperson Grinnell said she needed to make a comment about whether the people at home would be able to hear and Town Manager Carter said probably not. At this point, the Town Council turned their microphones around for use by the Planning Board.

Mr. Mangiafico expressed concern that the idea was that the southern portion of that area would be a denser business district than the northern district, which is a little more residential, in which case he thought that LB-1 was what they wanted there. He thought that somehow the descriptions had been flip-flopped.

Mr. Mangiafico said he thought the descriptions had been put into the wrong areas and that the description was consistent with the orange drawing on the map. He said that they hadn't had that particular map and he just thought nobody caught it; that the Planning Board had differentiated between the southern business district and the northern district where it was more of a downtown area. Mr. Mangiafico said that if you looked at the north, there were some businesses in there but there were more residences and they had wanted to keep that the regular LB.

Chairman White said that it was possible that could have happened and he agreed with the rationale because otherwise they would have said LB for the whole thing. Councilor Dennett asked if that meant that the original plan had been LB zoning without differentiation and Chairman White said that when they started to meet, they drew an imaginary line, at which point anything north of the traffic circle would be LB-1.

Town Manager Carter said to Chairman White, but isn't what has been advertised and what people have in their hands correct versus the physical description as part of tonight's handout?

Mr. Mangiafico said he thought that was supposed to be LB-1 and Chairman White said that LB-1 was an existing zone and they took those contents and extended it to anything in that area and that LB was a slightly different creature.

Town Manager Carter said, but you understand what I am saying, for the three public hearings, you're saying now those descriptions are not correct and Chairman White said I'm saying our intention was to have a denser zone in the southern area rather than the northern.

Ms. Gagner said, Jon is asking if this description is correct, what we're dealing with and not the one we got tonight. Chairman White said the railroad tracks are down the south side and that is where the confusion came, the zones so similar in name.

Chairperson Grinnell asked Chairman White if the Board and Council could take a five-minute recess to check this issue out. *A Recess was called at 8:10 p.m.*

The meeting resumed at 8:21 p.m. Chairman White explained that at some point in the planning process something got tacked to the wrong ordinance and because of that they would need to reschedule the hearing. Before that, however, he said that the questions posed by the present audience would be addressed.

Chairman White said Mr. Litsinberger had a question about extending the line south and invited Council's input. There was discussion about exactly where Mr. Litsinberger's property was and, consulting the map, where a proposed extension would reach. Mr. Mangiafico said that the original Commercial zone allowed 300 feet from the center line and that the Board made the decision to go to 150 feet on that section and that was what was affecting Mr. Litsinberger's property. Chairman White said they had not come up with an LB guideline option as to moving the line. Mr. Mangiafico said the 150 feet was more like coming up with a middle line and also that the comprehensive zoning map was a little different. Chairman White asked if 150 feet was deep enough in that one zone that if, in fact, the zones were flipped in order to proceed with the public hearing at a later date, how did that affect the situation? Mr. Mangiafico said it was still 150 feet. Chairman White asked if it would make sense to expand 200 feet on one side and 300 feet on the other. Mr. Mangiafico said he guessed they could take another look and see if that does dramatically differ from other zone lines.

Councilor Dennett said that the Board might want to consider legal counsel on the matter and unless there were some extreme changes, his opinion was to not hold any actions on this, or if motions were made on the Council, to merely reschedule it for two weeks but to be more specific since Mr. Litsinberger stands to lose 150 feet and continuing it to 200 feet, he still loses 100 feet and that he does have a singular situation and it would be a detriment to him. Councilor Dennett said that he for one would be in favor of viewing Mr. Litsinberger's property as a special exception since we were not here to intentionally hurt anyone and he thought it would be to his detriment.

Chairperson Grinnell said to Councilor Dennett that she believed the feeling was that there was a substantial change because the map did not reflect the zones accurately. Councilor Dennett said that if the Town Attorney hadn't described an incorrectly published map in a previous case a material error, then he wondered why that opinion wouldn't apply to this. Town Manager Carter asked Chairman White to correct him if he was wrong, but wasn't it the legal ad that was the one that was wrong.

Chairman White said that he presumed the legal ad was the right one. Councilor Dennett said this is presuming that one or more of the Planning Board is correct and that he had always thought that the LB zone encompassed Route 1 from the traffic circle and now he was hearing that was in error.

Chairman White said he thought that since doubts were expressed on record and because quite a bit of time and thought had gone into the plan, that if an error had been made in a fundamental area and that is what was advertised, he thought that these were types of questions the Board could address but felt that the decision to go forward or postpone should be the Council's and not the Boards to resolve.

Councilor Brock said that it sounded like, forgetting any other changes, this would be a fundamental change that the Planning Board needed time to address, as well as the fact that the Board now had the benefit of public comment which certainly could be used, but that we would have to have another hearing so, that would be my recommendation.

Councilor Dennett said the problem with that was the extra time and expense of renotification, etc. Councilor Shwaery said he would agree with Councilor Dennett that Mr. Litsinberger's proposal had merit and his property was unique and warranted more consideration but if they included it in LB, people in those residential zones were going to be converted to his LB and they should be able to come in

Councilor Brock said he understood that a zoning change would apply to his property and his alone and Mr. Litsinberger said there were other property owners and, pointing to the map, said that where the line stops at Maple Avenue, it would affect two. Councilor Shwaery said they were abutters that were not in the zone. Chairperson Grinnell said she agreed with Councilor Dennett that we don't want to cause anyone hardship and from tonight's testimony she said we would be causing hardship and we don't want to do that.

Chairman White continued by saying that Susan Emery raised a couple of good points concerning the definition of educational facilities because it's in both zones. Motel, hotel and inns, he said were different because the Board moved them to special exceptions and that concern would be addressed. Chairman White said he would also support language concerning roof colors. Ms. Gagner said that language was in the Standards for Building Design and she thought it was also in the handbook; it talks about material and color under Standards, small b, building and design standards should have characteristic styles. Chairman White said but it doesn't really give you a range of color and Ms. Gagner said but we specifically say that in the handbook. Chairman White said we should if its an important issue because someone might say well, bright orange is my business color and you can't prohibit it, but I suppose we could under this.

Chairman White asked the Board what the sentiment on this was. Mr. Mangiafico said we discussed it and decided not to because the question was, do we want to have it that strict in this zone? Ms. Gagner added, and do we want to have it in the other zones?

Chairman White said the educational facilities issue was in both and that he guessed the ideal was that for small areas like Whipple and Rogers Roads, those were quiet areas of Town and there was not much you could put in there; you couldn't put a college in there and I think that was our discussion - to keep those zones in existence as they are both. Mr. Mangiafico said the second zone did not include buildings that would be used for residential occupancy. Mr. Muir said a facility could include language study, or arts, some sort of instruction, and he didn't see it as a threat. Chairman White said that the Board could regulate it to scale.

Chairman White moved to respond to Debbie Driscoll whom, he said, had some good observations about infrastructure and asked the Board if anyone wanted to address them. She wondered if we took those issues into consideration when we created these zones. Chairman

White said that obviously, as part of our review, we make sure there are sufficient services available for any proposal so if there is a development that needs public sewer and there's no public sewer, there's no development.

Ms. Driscoll stood to address the Chair and said that when you propose to change a zone, you lead people to believe they could develop plans but when they get to you, they find they can't and I'm just wondering if anyone's checking into that. Mr. Mangiafico asked if she was referring to areas like Lewis Square and Whipple Road and Ms. Driscoll said and Mendum Creek.

Chairman White said that to some extent the plan recognized that the zone encompassed areas that had access to public services and some that did not. Mr. Muir said the short answer was the Board had taken into account the availability of services and if they had missed something, it was a good time to bring it out.

The Board discussed Ms. Driscoll's concern with the use of the term "mass transit" as well as questions concerning rooftop protrusions and minimum land use, parking and setbacks. Chairman White told Ms. Driscoll that if she wanted to come to the next workshop she would be more than welcome and that it was scheduled for the upcoming Thursday at 6:15 p.m.

Mr. Mangiafico said there had also been a question on Mendum Creek and said that the Town owns the water there. Councilor Dennett responded that that was a legal question which was still pending. Ms. Gagner said she had wondered about that too because there were docks on that side of the Creek.

Chairman White said that Mr. Bedard had some thoughts on too many rules and his response on behalf of the Board would be to say that a lot of these rules would be more pertinent to a large development and less so to a small one; that the Board's intention was not to make it too complicated. Mr. Muir said he thought they should tell Mr. Bedard that the process was interactive and there was a lot of interaction between the Board and the applicant, in keeping with the Board's desire to make it an informed process. Chairman White said that, as far as the height of the school building, the Board was limited as to height restrictions since it involved structural and fire safety issues so it was not an issue the Board could address.

Discussion followed concerning minimum street frontage and lot size. Someone from the audience asked why the border between LB and LB-1 was located where it was, which led to further discussions about the flip-flopping of descriptions.

Chairperson Grinnell said that she thought the Council needed to decide if they were going to postpone their deliberation for two weeks or ask for a scheduling of a new public hearing. Councilor Dennett suggested that the Town Manager might wish to refer the issue to the Town Attorney and then the Council could abide by that opinion. Town Manager Carter said he had the greatest respect for Councilor Dennett, however, if they extended the boundaries as they think they might, that was a substantial change and property owners would have to be notified and, by State Law, a public hearing would have to happen, probably on October 12. Councilor Dennett reminded Town Manager Carter his recommendation had been to refer the matter to the Town Attorney and Councilor Brock said that whatever the legal opinion was, it seemed, to him at least, that the considered changes were substantial so, in fairness to property owners and abutters, they should be notified and the Council could do it as expeditiously as possible but he did think another hearing was appropriate.

Chairperson Grinnell reiterated the need to decide. Councilor Shwaery said it was a little bit of a rock and a hard place and until the Council had an opinion from the Town Attorney, they were not sure they were dealing with a substantial change so he thought the Council needed to wait.

Chairperson Grinnell said her question would be if the Planning Board decided not to change that line, and she heard many councilors say they wanted to change it, and the line was not changed, did that necessitate another public hearing? Chairman White said it was simply a matter of correcting a typographical error.

Town Manager Carter said that, if he understood, the Board would change the legal map that was published in the newspaper and that north of the rotary would be LB and south of the rotary would be LB-1, which was different than what the legal ad map indicated. Mr. Mangiafico said that if that was what the legal map indicted, it was wrong.

Councilor Balano said that it appeared to him, regardless of whether they changed the boundary line, that change alone seemed to need a public hearing. Town Manager Carter said he would certainly ask the Town Attorney. Chairperson Grinnell said that deliberation would stop, an opinion obtained from the Town Attorney and that Council would call and make the results known.

Town Manager Carter asked the Council if the Town Attorney said another public hearing was necessary, could a motion be made to set October 12 as the hearing date? Chairperson Grinnell said yes, they could do that and then asked, if they had another hearing and what the Planning Board brought to that meeting did not reflect the changes that gentleman was looking for, and the Planning Board adopted it and then passed it up to the Council and Council wanted to move that line, would that require another public hearing? Councilor Dennett said he suggested that if the Council is of a similar mind and the Planning Board included Mr. Litsinberger's requested extension, then, in his opinion, the need for a public hearing would not be triggered.

Chairperson Grinnell asked if the Planning Board would like to hear a consensus from the Council on that particular issue - to make the change moving the line to accommodate Mr. Litsinberger's property? Mr. Mangiafico asked if they were talking about going back to the 300 feet and Chairperson Grinnell said no, they were talking about bringing the line down, not making it wider, but bringing the line down 740 feet. Councilor Brock asked if that was Mr. Litsinberger's proposal and the answer was yes. Chairman White suggested Council actually go out and see the property. Councilor Shwaery said that, on an editorial note, it would still be 16 days prior to the hearing and wondered if that would be enough time for a 14-day notice. Town Manager Carter said it was a matter of getting mailings out because that was what concerned him administratively. Chairperson Grinnell said she would be in support of that, as did Councilors Shwaery and Guy.

Chairman White asked Chairperson Grinnell if she would be at the workshop on Thursday and Ms. Grinnell said no, she wouldn't be but some others on the Council would.

**CHAIRPERSON GRINNELL MOVED TO CONCLUDE JOINT PUBLIC HEARING
WITH THE PLANNING BOARD UNTIL OCTOBER 12, 2005, SECONDED BY
COUNCILOR BALANO**

Chairperson Grinnell asked if there was discussion and Town Manager Carter asked if

the Town Attorney's opinion was that no public hearing was necessary, would the Chairperson please bring it back up on the 26th of September? Chairperson Grinnell asked if the Planning Board would be ready on the 26th and Chairman White said yes, they would be all set.

. ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/0.

At that time, Chairperson Grinnell called for a recess. *A Recess was called at 9:00 p.m.*

The meeting resumed at 9:11 p.m. Councilor Brock said he wanted to revisit the decision to seek the Town Attorney's opinion about the need for public hearings and why not go ahead and schedule the hearings in an attempt to resolve the issues as soon as possible. Councilor Dennett said he might practically agree with Councilor Brock, however, if material errors were made by the Council at this point, it was going to come back to haunt everyone. Chairperson Grinnell said she happened to believe that these were substantial changes and couldn't imagine going forward without a public hearing because the Council was going to move that line and affect four properties. Councilor Brock said that regardless of whether a public hearing is legally required, it still is fair to have a public hearing since the zoning would affect at least four property owners. Councilor Shwaery said I would say that was my position 45 minutes ago.

Councilor Balano said he would tend to agree and thought it was a conservative approach. He said he thought the Council was actually at more risk if the Town Attorney said no hearing and someone disagreed and took them to court. Councilor Dennett said he wouldn't take the matter any further but just hoped that if the Council went ahead, they wouldn't experience any legal backlash. Chairperson Grinnell said she believed there was a consensus and, therefore, the Council would have the public hearing, as they said, on October 12 and would not need Councilor Dennett to call up the Town Attorney and ask his opinion.

Councilor Dennett asked if the Council was going to renote the whole Town or just send the notice out to the affected area. Chairperson Grinnell asked him if he would like to make a suggestion on that. Councilor Dennett said he thought that certainly it was more important to those in the zone, secondly to those that abut the zone but, without question, the whole Town had some interest, but whether it should be readvertised in its entirety, he didn't know and perhaps that was a legal question. Councilor Brock said he believed we should just readvertise the zones and get on with it. He thought the Council could make problems for themselves, so they should avoid getting into that and republish for the entire Town. Chairperson Grinnell said she agreed with that and Councilor Dennett said all zones, just with the right information.

b. (090105-2) *THE KITTELY TOWN COUNCIL MOVES TO HOLD A PUBLIC HEARING ON, AND HEREBY ORDAINS AMENDMENTS TO, CHAPTER 12.10, ROGERS PARK AND CHAPTER 12.18, TOWN FARM TO ADD NEW SECTIONS PROHIBITING OVERNIGHT CAMPING IN BOTH OF THESE LOCATIONS.*

Chairperson Grinnell said the Council was moving on and addressed Police Chief Edward Strong, saying the Council was going to discuss his issue for three minutes and invited the Chief to make a statement before she opened the public hearing.

Chief Strong said that it had been brought to his attention that people this summer had been camping overnight, some for an extended length of time, at the Town Farm and also at

Rogers Park. He said he checked the ordinances and found nothing that prohibited overnight camping. There was, he said, for Fort Foster and Seaport Beach but, for some reason, it had been left out for Rogers Park and Town Farm. He sought advice from and met with the Conservation Commission who asked him to draft an ordinance to prohibit overnight camping at Rogers Park and Town Farm. It was deemed unsafe since there were no facilities, no electricity, no bathrooms; that was the concern, and I brought it forward to you people.

Chairperson Grinnell said this was advertised in the newspaper on September 2. Councilor Balano asked the Chief how many people had complained and the Chief answered that in regard to Rogers Park he knew of at least five that had contacted them over the period of a year. Councilor Balano asked if there had been any complaints about Town Farm and the Chief said no.

Chairperson Grinnell asked if there were any other questions for the Chief and there were none.

CHAIRPERSON GRINNELL MOVED THE MOTION TO HOLD A PUBLIC HEARING ON, AND HERBY ORDAINS AMENDMENTS TO, CHAPTER 12.10, ROGERS PARK AND CHAPTER 12.18, TOWN FARM TO ADD NEW SECTIONS PROHIBITING OVERNIGHT CAMPING IN BOTH OF THESE LOCATIONS, SECONDED BY COUNCILOR BALANO.

Councilor Dennett told the Chief it certainly was a pleasure to see him amongst them again and that the Council would be asking him to stay to debate adjournment. He then said he knew that this was the exact wording used for Seaport Beaches and Fort Foster. The Chief said yes, closing the area from 12:01 p.m. and opening again at 6:00 a.m. Councilor Dennett asked if that prohibited people from staying overnight and the Chief said yes, that was the intention. Councilor Dennett said that it wouldn't prohibit anyone from going in and sleeping in a sleeping bag so wondered what would be accomplished. Chief Strong said that was probably correct but he didn't think there were too many people that would go into dark woods with just a sleeping bag but supposed they could put a blanket or tarpaulin over themselves. Councilor Dennett suggested it might be more reasonable and much easier to close these areas for certain periods of time, such as from sundown one day to sun up the next. Chief Strong agreed that it would be easier but he had been asked to prohibit the camping and didn't know if the Conservation Commission would have an objection. Councilor Dennett said that if the Council changed it and no one could be in the Park at certain times, it would make the police's job easier and the Chief said it definitely would. Councilor Dennett said his opinion was they should make it all-inclusive and the Chief agreed. Chairperson Grinnell said she also agreed.

Councilor Balano said he had another question; there was something he didn't understand. He said to the Chief that he had mentioned the sanitation issue as a safety issue and asked what if they did, and what was the exact complaint - that people were walking around at night, people were camping at night, what harm were these people doing - what was the problem exactly? The Chief responded that the majority of the complaints were about homeless people that were setting up living areas 24 hours and were going the bathroom with no facilities, bringing in food even though they can't have fires and that they walked around at night. Councilor Balano said he was just trying to understand, like if a group of boy scouts wanted to camp overnight at Town Farm, would that be all right or was it a specific type of camper they were trying to prohibit? The Chief said that one of the ways they did it at Seaport

Beach was that if people wanted to bring a group of boys to see what camping would be like, but not stay overnight, they could come in and set up but that they were in safe areas.

The Chief said they had a lot of vandalism in Rogers Park and that he'd rather close it down because it would be easier to keep it monitored. Councilor Brock asked about the time and if midnight to sunrise worked for the Chief. Chief Strong said yes, having set hours worked because, like overnight parking, you would have to show any time from midnight to 6:00 a.m. and it was easier to prosecute. Whether anyone would want to be down there at midnight, he said he didn't know. Councilor Brock said he had been thinking about what Mr. Balano asked about boy scouts and wanted to know if it really was unsafe. The Chief said that any situation where you don't have lights and walking paths, the door was opened to liability. He said that, certainly, a group could ask the Council for permission if they wanted to hold say a jubilee. Councilor Brock said, but camping would be prohibited from midnight to 6:00 a.m? The Chief answered yes and the reason he did that was because it was the same language used for Seapoint Beach.

Chairperson Grinnell said that Council had a motion before it and asked if the Conservation Commission had any objection. A member of the Conservation Commission who was in the audience stated that no, they had no objection and that the boy scouts had never asked for overnight stays. Councilor Dennett said that seeing as the Chief had done such a good job in writing this up, he would move to change the wording to sundown of one day to sunrise of the following day, which would be a more generous timeframe than what was stated there. Chairperson Grinnell asked if he was suggesting that they leave the camping issue. Councilor Dennett said that a sign should be posted at the entrance to each park that read "Entrance is not permitted from sundown of one day to sunrise of the next day." Chairperson Grinnell asked what was not permitted - entrance to the Park? Councilor Dennett said entrance to the park - if we want to see the overnight camping stopped.

Councilor Guy said he agreed with Councilor Dennett but he wouldn't want to close the door totally if boy scouts wanted to do that in the future. Chief Strong said that whatever was done, a caveat could be inserted saying: unless Council gives permission. Councilor Dennett said that was fine, if Council gave permission. Councilor Balano said how about a camping permit being provided. Chairperson Grinnell said she thought that's what they were talking about; there could be a special exception by permission of Council or Conservation Commission. Chief Strong said he would leave it to the Council and they could rewrite his drafted ordinance or, if they wanted, he could redraft it and bring it back to them.

Town Manager Carter said that this was a substantial change so that another public hearing would have to be called. Councilor Dennett said he disagreed entirely and that if every change were deemed a substantial change, they would never get anything done. Town Manager Carter said he respected that but disagreed because the Town had advertised this as a minimal restriction on camping and now they were taking away people's rights to enter the Park and he thought that was a substantial change. Councilor Dennett disagreed, saying that if they went back over the years, this Council had been enacting ordinances, any number of which would be null and void if making a change was called a fundamental change, and he knew that Mr. Carter had attended meetings in Augusta as had he and that by the time something got done, it didn't look anything like the original.

Chairperson Grinnell said she understood the danger but would like to go back to the motion before them and have Council vote on it so at least they would have dealt with this issue

on the books. Councilor Balano said he would like the motion to say how they had talked about it and come up with permissible uses that were a little better designed than what they had. He said he didn't support the drafted ordinance as written without getting some kind of allowance. Councilor Balano said he would like to make an amendment by adding the words, "unless permitted by Town Council" under 12.10.4 and 12.18, Section J, at the end of that section. Chairperson Grinnell seconded the motion.

Councilor Dennett said he didn't disagree but if this was camping only, it was not going to solve the problem; therefore, he would have to vote against it. Chairperson Grinnell said she thought it would achieve what they were looking for right now. The motion now read "unless authorized by the Town Council." Councilor Dennett said that if it passed as amended it would not prohibit people from sleeping or even living there. Councilor Brock said that with the provision they just approved, they could discuss changing the definition of camping and do that without a public hearing, but he did agree that part of the problem would not be addressed with what they had on the table and wondered if it could be amended in some way so it would be broader in scope. Councilor Shwaery said the definition of camping was the use of a tent or temporary structure and asked Chief Strong if the people found camping had been using some sort of shelter. Chief Strong said that Mr. Dennett had a good point but the problems they've had in the past were that people had set up tents or structures to get out of the elements and the actual complaints they received were with tents and people sleeping in them. Chairperson Grinnell asked if there was any further discussion from the Council and there was none.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION WITH AMENDMENT ADDING THE WORDS "UNLESSS PERMITTED BY TOWN COUNCIL" PASSES 6/0.

9. DISCUSSION

a. *DISCUSSION BY MEMBERS OF THE PUBLIC.*

Chairperson Grinnell asked if there were any members of the public that wanted to discuss anything.

Don Moore of 35 Norton Road said that a couple of weeks ago, they were having dinner and heard a couple of gunshots behind their house. His neighbor said they were target shooting in the back, but talking to his other neighbors he found out that the owner of the property wanted to set up a shooting range in back. Mr. Moore said he looked at the ordinances and found nothing prohibiting a shooting range and found out that Sgt. Eaton of the Police Dept. had sole authority to permit them. Mr. Moore said he was not questioning Sgt. Eaton's credentials but he was questioning the policy of having one man have total authority, which seemed extreme to Mr. Moore and he was wondering what recourse he had since it was a residential area and he had two young children. If Sgt. Eaton does approve this shooting range, what could he do?

Heather Thibideau said she lived in the neighborhood Mr. Moore was talking about and a couple of evenings ago her kids counted 24 shots at one time. She said she had four kids and that it was 120 feet, not yards, from her kitchen to where they were shooting. She said they found out that another neighbor of theirs was putting in a request to have a shooting range and they were concerned and wanted to find some help to find out what they could do. She said that some people have said it was an EPA issue because of wetlands so perhaps Conservation,

but other people have said it was a zoning issue but the fact is they're building more homes in our area and more homes bring more children. If you're going to have a shooting range, shouldn't it be posted because children and others walk in the woods? She wondered what laws prevailed, were they governed by hunting laws, then it should be 100 yards but if you're hunting, that means they could shoot after dark. She said she wasn't getting clear answers. She said that she found out that a noise ordinance may not apply for shooting ranges. She asked how someone would go about putting in an ordinance to prevent approval of the shooting range and if it were to go in, and she hoped it didn't, who would monitor it and continue to monitor it and what if they did come to within 100 yards?

b. CHAIRPERSON'S RESPONSE TO PUBLIC COMMENTS.

Chairperson Grinnell asked if there was anyone else and received no response. She then said she was going to close the public hearing and ask Chief Strong if he could answer some questions.

Chief Strong said that any range that's been approved by the Town gets that approval through the Police Department. That authority, he has given to Sgt. Eaton, who is a qualified standards officer and, if Council remembered, it hadn't been too long ago he proposed some changes to those ordinances and those changes were turned down by the Town Council so the area these people lived in you can have a shooting range if you apply for it and you meet the requirement not to come within 100 yards of a residence, so if one does go in there, it would be built to the specifications Sgt. Eaton applies. Chairperson Grinnell asked the Chief where Sgt. Eaton got the specifications and Chief Strong said he used a book by the National Rifle Association on range standards. He said he also recommended that the Planning Board set changes for new ranges and they had not done that.

Chief Strong said they couldn't do anything about the existing ranges that were already there and that they were not governed by hunting laws. Hunting is sunrise to sunset and not Sundays but that does not apply to ranges and they can operate ranges on Sunday and even at night and that is the ironic part about the law. Councilor Guy asked about the gunshots discharged near the neighbors and Chief Strong said they had been stopped, that the police went down and told them they had to stop. He said that the person who owned the lot where the shooting was coming from had more than enough property behind them to handle a range. Chairperson Grinnell said she did remember when Chief Strong came and all those fellows with orange hats and asked the Chief what he had asked them to approve. Chief Strong said he thought it belonged to the Planning Board to find out where they wanted this to happen.

Councilor Balano said he remembered living on Norton Road and there had been a lot of gun shots and he was wondering if they could consider an amendment to the ordinance to allow a public hearing at least, in addition to a planning consideration for that kind of thing and having approval by Council; it seemed to him a significant event that someone would want a rifle range in their back yard and that people should be able to express concerns about a specific proposal and it didn't sound like there was that forum now, it sounded like if Sgt. Eaton said so, it went in. Chief Strong said to remember that the Town Council said that's what they wanted; it didn't fly when he wanted to issue a permit and have it looked at every year but that maybe it was time to have a workshop to see if we want to continue to have these ranges. In the area these people live in he made a proposal to make it a shotgun area only but that was also shut down. He said he had the same type of problem where he lived.

Councilor Brock asked how many ranges there were and Chief Strong said he thought

there were six. Councilor Brock said he recalled that the Chief came forward with proposals to regulate and restrict operations and he agreed with the Chair that the Council needed to reconsider; that they needed to be very clear about where and where not they would allow shooting ranges and that he would support revisiting the issue. Chief Strong said that the ones they had allowed they took pride in because of the fact that they had made them safe.

COUNCILOR DENNETT SAID THAT SEEING THE HOUR WAS CLOSE HE MOVED THAT THE MEETING BE CONTINUED TO NO LATER THAN 11:00 P.M., MOTION WAS SECONDED, AND MOTION PASSED WITH ALL IN FAVOR BY VOICE VOTE.

Discussion ensued concerning the possibility of people being able to bring an action against the shooting range describing it as a nuisance, thus having it abated. Chairperson Grinnell asked the Chief if the Council had the authority to tell Sgt. Eaton not to approve any more ranges and the Chief said no because of the present ordinance. Chairperson Grinnell said that if the Council held a public hearing in order to create a safety ordinance that it would take 30 days and expressed frustration at living in a residential town where people could shoot and the bullet could go far enough to hit someone. Chief Strong suggested the Council put a moratorium on new ranges until the issue could get researched.

Councilor Guy said he would be in favor of looking at the ordinance to make amendments and, though he didn't want to appear to be minimizing the threat, he wasn't sure about putting a moratorium on everything. Councilor Brock said he agreed that the quicker, the better. He said that he hadn't seen the ordinance and asked if the Town Manager could deliver a copy to Council so as to get it on the agenda but that there would have to be a public hearing.

Chairperson Grinnell said she thought Council had to get something from the Planning Board. Councilor Dennett said that land use ordinance changes did not have to originate with the Planning Board, that they could come from Council, that they had done it in the past as a matter of courtesy but the Council could originate it.

Councilor Brock said it sounded like the Chief had generated recommendations, though they weren't adopted, and wondered if the Chief would want to put them forward again so Council could look at them. Chief Strong said he believed that what they talked about even two years ago was now out of date and he honestly didn't know what the Town could do to solve the problem without a total ban. Councilor Brock asked the Chief if there was an application before the Planning Board and the Chief said no. Mr. Brock then said that this is a matter that has now come before Council and since there may be changes to the regulation, the Police Department should so inform any applicant that changes may be made.

Chairperson Grinnell suggested setting up a workshop where councilors, police, the public and members of the Planning Board could all come together and brain storm to write something up and asked what the Council wanted. Councilor Shwaery said if we were having a workshop, he would prefer to first see what the police had to say and Chairperson Grinnell said that Council could hear them at the workshop. Councilor Shwaery said that a workshop would be Step No. 1. Chairperson Grinnell said that discussions were needed as to what was going to be on the table. Councilor Shwaery said but the Chief already had some recommendations and that they should hear what the Police Department had to say. Councilor Dennett said that a workshop does not usually involve the public verbally; that they had the right to hear it but if they opened it up to input, they'd have a free-for-all. He agreed they needed something from

the Chief to build on and take away from. Chief Strong said he would be glad to do that and asked if Council could give him a couple of weeks. Chairperson Grinnell said no, that she would like to schedule a workshop. Councilor Balano suggested giving the Chief two weeks and to go for a workshop from there. Chief Strong said that what he would like to do was actually to go back and look at all the complaints they had and find out what the biggest complaints were, whether they were noise, time, zone it was located in, etc., then sit down with Sgt. Eaton and go over what they proposed before and he thought they could do that in two weeks. Chairperson Grinnell said it was a slow process but she agreed with Councilor Brock that the public had to be noticed but still wondered about the possibility of a ban. Chief Strong said there was nothing that at this point would go through them but suggested the possibility of bringing legal action.

10. UNFINISHED BUSINESS

a. THE KITTERY TOWN COUNCIL MOVES TO INCREASE THE FEES AT FORT FOSTER AS RECOMMENDED BY THE PARKS COMMISSION.

Councilor Dennett said that seeing as so much confusion had been presented to them this evening, he was in no position at this particular time and suggested that some cohesion of items that were left could come back to them at some specified date and printed up with the new agenda items.

Chairperson Grinnell said she was going to say that if the Town Manager could get those pages of information they got concisely written on half a sheet of paper, then they could discuss that on the 26th.

Discussion with the Town Manager followed and Councilor Brock asked if that would include the administration and fee proposals and Chairperson Grinnell asked Council if that was okay.

PARKS COMMISSION FEE RECOMMENDATIONS TO BE HEARD 9/26/05.

b. THE KITTERY TOWN COUNCIL MOVES TO APPROVE/SIGN A RESOLUTION OF CELEBRATION AND APPRECIATION FOR THE FIGHT TO KEEP THE NAVAL SHIPYARD IN KITTERY, MAINE OPEN AND OFF THE BRAC LIST.

Chairperson Grinnell said that before they voted on that, she needed to give Mr. Carter a present and told Mr. Carter that since he had been unable to be there on the 24th when they had their party, they were now giving him his "We Love This Man" t-shirt and the reason they loved that guy was because he was the one who called them "the golden standard."

COUNCILOR DENNETT MOVED THAT THE KITTERY TOWN COUNCIL APPROVE/SIGN A RESOLUTION OF CELEBRATION AND APPRECIATION FOR THE FIGHT TO KEEP THE NAVAL SHIPYARD IN KITTERY, MAINE OPEN AND OFF THE BRAC LIST, SECONDED BY CHAIRPERSON GRINNELL. ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/0.

c. OTHER - None.

11. NEW BUSINESS

a. (090105-3) *THE KITTERY TOWN COUNCIL MOVES TO APPROVE THE DISBURSEMENT WARRANTS.*

CHAIRPERSON GRINNELL MOVED TO APPROVE DISBURSEMENT WARRANTS, SECONDED BY COUNCILOR BALANO. ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/0.

b. (090105-4) *THE KITTERY TOWN COUNCIL MOVES TO APPOINT RICHARD J. DEMARCO, JR. TO THE PARKS COMMISSION UNTIL 5/3/08 (REPLACING CHARLINE LUDGATE).*

Chairperson Grinnell said she had interviewed Mr. DeMarco and that he was a great candidate.

CHAIRPERSON GRINNELL MOVED TO APPOINT RICHARD J. DE MARCO, JR. TO THE PARKS COMMISSION UNTIL 5/3/08, SECONDED BY COUNCILOR BALANO. ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/0.

c. (090105-5) *THE KITTERY TOWN COUNCIL MOVES TO RE-APPOINT FRANK C. FRISBEE TO THE PORT AUTHORITY UNTIL 8/31/10.*

Councilor Shwaery said he had interviewed Mr. Frisbee and that he had tremendous experience with the Port Authority and suggested he be reappointed.

COUNCILOR BALANO MOVED TO REAPPOINT FRANK C. FRISBEE TO THE PORT AUTHORITY UNTIL 8/31/10, SECONDED BY COUNCILOR GUY. ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/0.

d. (090105-6) *THE KITTERY TOWN COUNCIL MOVES TO RE-APPOINT WILBUR RHODES TO THE RECYCLING SCHOLARSHIP SELECTION COMMITTEE UNTIL 2/8/07.*

CHAIRPERSON GRINNELL MOVED TO REAPPOINT WILBUR RHODES TO THE RECYCLING SCHOLARSHIP SELECTION COMMITTEE UNTIL 2/8/07, SECONDED BY COUNCILOR GUY.

Councilor Dennett said to the Chair that there had not been an interview in this case and Chairperson Grinnell suggested that they suspend Council Rules and go ahead with the reappointment.

CHAIRPERSON GRINNELL MOVED TO SUSPEND COUNCIL RULES IN ORDER TO VOTE ON THE REAPPOINTMENT OF WILBUR RHODES, SECONDED BY COUNCILOR GUY. ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/0.

CHAIRPERSON GRINNELL MOVED TO REAPPOINT WILBUR RHODES TO THE

RECYCLING SCHOLARSHIP SELECTION COMMITTEE UNTIL 2/8/07,
SECONDED BY COUNCILOR GUY. ROLL CALL VOTE WAS TAKEN WITH ALL
IN FAVOR. MOTION PASSES 6/0.

Councilor Guy wanted to thank Mr. Rhodes for being a fixture in the Town and said that he'd had an opportunity to talk to Mr. Rhodes and thought he was a great guy.

e. *(REVIEWED OUT OF ORDER)*

f. (090105-8) *THE KITTELY TOWN COUNCIL MOVES TO APPROVE A FEE
STRUCTURE FOR UNIVERSAL AND ELECTRONIC WASTES UNDER THE KITTELY
MATERIALS RECOVERY FACILITY RULES, REGULATIONS AND USER FEES
COMMENCING NOVEMBER 1, 2005.*

Chairperson Grinnell said that she now knew why Mr. Rossiter was patiently sitting there and invited him to the podium in case any councilors had questions and asked him how the new facility was. Mr. Rossiter said that it was coming. Chairperson Grinnell asked him if he hoped to be up and running by November 1 and Mr. Rossiter answered yes.

Mr. Rossiter said that Council had a price listing for Universal & Electronic Waste Disposal and that he had made some slight corrections he noticed as he was sitting there.

COUNCILOR BALANO MOVED TO APPROVE THE FEE STRUCTURE FOR
UNIVERSAL AND ELECTRONIC WASTES UNDER THE KITTELY MATERIALS
RECOVERY FACILITY RULES, REGULATIONS AND USER FEES COMMENCING
NOVEMBER 1, 2005, SECONDED BY CHAIRPERSON GRINNELL.

Councilor Guy asked Mr. Rossiter about the cost for mattresses and box springs, if the cost of \$4.00 applied to just the mattress and Mr. Rossiter said that mattresses were \$4.00 and \$4.00 for the box spring because they were listed under mandatory separation. Councilor Guy asked, so it would be eight bucks to get rid of a bed and Mr. Rossiter said yes. Councilor Dennett asked Mr. Rossiter how would he know if his PCB was ballast and Mr. Rossiter said that it says. Councilor Dennett asked Mr. Rossiter if he would bring his small batteries to him and Mr. Rossiter said that no, alkaline batteries would go into your regular waste. Discussion continued concerning container sizes and pricing. Councilor Shwaery questioned Mr. Rossiter about how to handle paint.

Chairperson Grinnell asked if there were any further questions and said that Mr. Rossiter had made additional amendments, which might be considered tonight. She said he added 16 after 15B and C to include the words universal and electrical waste. Councilor Dennett said he thought that's what they were voting on and Town Manager Carter said he thought they were just voting fees.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/0

g. (090105-9) *THE KITTELY TOWN COUNCIL MOVES TO APPROVE THE NAME
OF "RAYNES ISLAND" TO AN UNNAMED ISLAND ADJACENT TO SEAPOINT ROAD
PREVIOUSLY OWNED BY MARY KIMBALL AND RECENTLY GIFTED TO THE U.S. FISH
AND WILDLIFE SERVICE TO BE INCLUDED IN THE RACHEL CARSON NATIONAL*

WILDLIFE REFUGE IN HONOR OF MS. KIMBALL'S FATHER, WILLIAM F. RAYNES.

COUNCILOR DENNETT MOVED TO APPROVE THE NAME OF "RAYNES ISLAND" TO AN UNNAMED ISLAND ADJACENT TO SEAPOINT ROAD IN HONOR OF WILLIAM F. RAYNES, SECONDED BY COUNCILOR BALANO.

Town Manager Carter asked if Council would authorize him in the motion to sign the document submitted to the Council by the U.S. Board on Geographic Names and Chairperson Grinnell said that yes, they would.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/0.

h. (090105-10) *THE KITTERY TOWN COUNCIL MOVES TO APPOINT _____ AS A VOTING DELEGATE TO MAINE MUNICIPAL ASSOCIATION'S ANNUAL BUSINESS MEETING ON OCTOBER 5, 2005.*

COUNCILOR DENNETT MOVED TO APPOINT TOWN MANAGER CARTER AS A VOTING DELEGATE TO MAINE MUNICIPAL ASSOCIATION'S ANNUAL BUSINESS MEETING ON OCTOBER 5, 2005, SECONDED BY COUNCILOR GUY. A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/0.

i. *OTHER NEW BUSINESS*

Councilor Balano said he had two quick items: 1) Council had two petitions submitted and he thought they should have a public hearing on those two petitions, which had four questions associated with them. He thought September 26 might be a good date to have that public hearing. Chairperson Grinnell said that sounded like a good idea.

Town Manager Carter said this petition came in today and that they were doing two things with it: 1) the Town Clerk would verify the petitioners' signatures to see if they were sufficient; secondly, they would send the two petitions over to the Town Attorney for his review of the format to see if it was a legal referendum format for action, so they would appreciate September 26 as the potential public hearing date because that was the last date the four questions could be considered for the ballot, however, they needed the caveat that it would have to pass both the Town Attorney and Town Clerk's inspection.

Councilor Balano said, second, we will need to hear amendments on Admiralty Village and I suggest October 12 for a public hearing.

12. COMMITTEE AND OTHER REPORTS

a. *COMMUNICATIONS FROM THE CHAIRPERSON*

b. *TOWN MANAGER'S REPORT*

Town Manager Carter said that information had been distributed to the Council and that there would be a public hearing next week, the 21st at 9:00 a.m. at South Berwick Town Hall and, as Madam Chair had indicated, on September 26 at 6:00 p.m., there's a workshop I've asked for to demo the biographical information system that is being discussed among staff and we want to make sure Council is on board with this kind of project.

Mr. Carter said that Eliot, South Berwick and ourselves had joined together with the

Southern Maine Regional Planning Commission and Department of Transportation to look at the 236 corridor and they had received some notification asking if the Town Managers of the corridor would ask their respective Councils and Board of Selectmen if they would join together in a workshop setting to discuss the 236 corridor and discuss a process for formal study that would be the outcome of the work of the Towns on the corridor. They had given some dates and Mr. Carter said he would put a copy of the memo in everyone's mailbox and if Council was not negative to the idea, he would try to find a date that some councilor would be able to attend.

Mr. Carter spoke about the Maine Coastal Cleanup Week and roadwork on 236, saying that paving was underway and that they were complying with the noise ordinance except where on and off areas were located but that those were going to be done after 9:00 at night.

In regard to the community's response to Hurricane Katrina, Mr. Carter said they had four firefighters who had signed up with FEMA and that they were down in Atlanta training and would be assigned to either Louisiana or Mississippi.

Mr. Carter said that they had been invited to a Naval Museum Dedication Ceremony on November 5 at 2:00

Mr. Carter told the Council that the Town was part of a tax plan and that they had received a \$16,000.00 dividend check. Councilor Shwaery asked about the fate of the money and Mr. Carter said that the money would go back into the insurance account so that they would have a surplus at the end. Mr. Carter was asked if the Town got that every year or something in that ball park and he said he wished, but that he had been in municipal government a long time and had never seen a dividend in this amount before but that they certainly had a lot of money to disburse this year. Certainly, Mr. Carter said, we have had a better track record and told the Council not to forget that they had to share it with the School Department so not all of it would come back to the municipal side of the house. Councilor Shwaery said obviously, we budgeted for this and Mr. Carter said no, workmen's comp is on a five-year ratio and its hard to rationalize – you had one good year and then you had four bad years – but he thought that it had been good investments by MMA and a large pool of that money came back to the Town. Councilor Dennett said that essentially, that was correct.

c. COMMITTEE REPORTS

13. ADJOURNMENT

CHAIRPERSON GRINNELL MOVED TO ADJOURN AT 10:47 P.M., SECONDED BY COUNCILOR BALANO. ALL WERE IN FAVOR BY A VOICE VOTE.